ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ಸಂಪುಟ ೧೫೦ Volume 150	ಬೆಂಗಳೂರು, ಗುರುವಾರ, ಮಾರ್ಚ್ ೧೨, ೨೦೧೫ (ಫಾಲ್ಗುಣ ೨೧, ಶಕ ವರ್ಷ ೧೯೩೬) Bengaluru, Thursday, March 12, 2015 (Phalguna 21, Shaka Varsha 1936)	ಸಂಚಿಕೆ ೧೧ Issue 11

ಭಾಗ ೪

ಕೇಂದ್ರದ ವಿಧೇಯಕಗಳು ಮತ್ತು ಅವುಗಳ ಮೇಲೆ ಪರಿಶೀಲನಾ ಸಮಿತಿಯ ವರದಿಗಳು, ಕೇಂದ್ರದ ಅಧಿನಿಯಮಗಳು ಮತ್ತು ಅಧ್ಯಾದೇಶಗಳು, ಕೇಂದ್ರ ಸರ್ಕಾರದವರು ಹೊರಡಿಸಿದ ಸಾಮಾನ್ಯ ಶಾಸನಬದ್ಧ ನಿಯಮಗಳು ಮತ್ತು ಶಾಸನಬದ್ಧ ಆದೇಶಗಳು ಮತ್ತು ರಾಷ್ಟ್ರಪತಿಯವರಿಂದ ರಚಿತವಾಗಿ ರಾಜ್ಯ ಸರ್ಕಾರದವರಿಂದ ಪುನಃ ಪ್ರಕಟವಾದ ಆದೇಶಗಳು

ELECTION COMMISSION OF INDIA

(Nirvachan Sadan, Ashoka Road, New Delhi-110001)

NOTIFICATION

Dated : 12th December, 2014.

No. 82/KT-LC/1/2012/2014- In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order dated 1st March, 2014, of High Court of Judicature at Bangalore in Election Petition NO. 1 of 2012 filed by Shri A. Devegowda calling in question the election of Shri Ramachandra Gowda as a member of the Legislative Council of Karnataka from Bangalore Graduates' constituency.

By Order
K. AJAYA KUMAR
PRINCIPAL SECRETARY

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 1ST DAY OF MARCH 2014

BEFORE

THE HON'BLE MR. JUSTICE H.G.RAMESH

ELECTION PETITION NO.1/2012

BETWEEN :

SHRI A DEVEGOWDA

SON OF SHRI ALLAPPA GOWDA

AGED 57 YEARS

RESIDING AT NO.1523

11TH MAIN ROAD

VIJAYANAGARA

BANGALORE - 560 040 - PETITIONER

(BY SRI H.D.AMARANATHAN, ADVOCATE)

AND :

1. SHRI RAMACHANDRA GOWDA
   SON OF SHRI. VENKATAPPA
   MAJOR, RESIDING AT J NO.9, 'ICERI'
   21ST CROSS, 3RD BLOCK, 4TH STAGE
   BASAVESHWARANAGAR
   BANGALORE - 560 079
2. SHRI. RAMOJI GOWDA (RAMOJAM)
   SON OF LATE NARAYANA GOWDA
   MAJOR, RESIDING AT NO.19
   'BYRAVESHWARA NILAYA'
   CLASSIC COLONY
   BOMMASANDRA VILLAGE AND POST
   ANEKAL TALUK, BANGALORE
3. SMT. K.S. LAKSHMI
   WIFE OF SHRI. K.N.UMESH
   MAJOR, NO.152, 4TH CROSS
   1ST MAIN, 2ND STAGE
   KUMARASWAMY LAYOUT
   BANGALORE - 560 078
   ALSO AT NO.306/A
   3RD CROSS, 7TH MAIN, 2ND STAGE
   KUMARASWAMY LAYOUT
   BANGALORE - 560 078
4. DR. ASHWIN MAHESH
   SON OF SHRI. C.N.U.MAHESWARAN
   MAJOR, RESIDING AT NO.B3-404
   L&T SOUTH CITY
   AREKERE MICO LAYOUT
   OFF BANNERGHATTA ROAD
   BANGALORE - 560 076
5. SHRI. DEVEGOWDA
   SON OF SHRI ALAHALLY MARIGOWDA
   MAJOR, RESIDING AT NO.3
   DODDAALAHALLY VILLAGE AND POST
   KANAKAPURA TALUK
   RAMANAGARA DISTRICT
6. SHRI. DODDEGOWDA
   SON OF LATE NARASAPPA
   MAJOR, RESIDING AT NO.99
   22ND MAIN ROAD
   MARENAHALLI EXTENSION
   VIJAYANAGARA
   BANGALORE - 560 040
7. NAGALAXMIBAI
   DAUGHTER OF SHRI GIRIYANAIK K.C
   MAJOR, RESIDING AT NO.8
   4TH CROSS, SUDHEENDRANAGARA
   MALLESWARAM
   BANGALORE - 560 003

8. SHRI M.K.NINGAPPA
SON OF KARIGOWDA
MAJOR, RESIDENT OF CHAKKALLURU
DODDI VILLAGE, CHAKKALLURU POST
MALURU HOBLI CHANNAPATTANA TALUK
RAMANAGARA DISTRICT
9. SHRI BHEEMANNA .D
SON OF SHRI. DODDAPPAIAH
MAJOR, RESIDING AT NO.284
15TH A CROSS, YELAHANKA UPANAGARA
BANGALORE - 560 064
10. SHRI H.R.MANJUNATHA PRASAD
SON OF SHRI. J. REVANNA AARADHYA
MAJOR, RESIDING AT NO.879
YELLAMMA TEMPLE STREET
ANNASANDRAPALYA, HAL
BANGALORE - 560 017
11. SHRI T.B.MADWARAJA
SON OF SHRI T.K.BOMMAGATTE
MAJOR, RESIDING AT NO.164
BUILDING NO.30 KHB COLONY,
SHIRKE APARTMENT
KENGERI UPANAGARA
BANGALORE - 560 060
12. SHRI. RAMA NAIK
SON OF SHRI GOVINDA NAIK
MAJOR, RESIDENT OF GOLLAHALLI
ANTHARAHALLI POST
DODDABALLAPURA TALUK
BANGALORE RURAL DISTRICT
13. SHRI Y.N.SHARMA
SON OF SHRI. H.ASWATHANARAYANA SHARMA
MAJOR, RESIDING AT NO.88/3
4TH MAIN, 13TH CROSS MALLESHWARAM
BANGALORE - 560 003
14. DR. K.M.SURESH
SON OF SHRI MARILINGAIAH
MAJOR, RESIDING AT NO.629
'GANGOTRI', 7TH MAIN ROAD VIJAYANAGARA
BANGALORE - 560 040
15. MRS. I.SULTANA BEGUM
WIFE OF LATE MR. S.Q.KHURRAM JEELANI
MAJOR, RESIDING AT NO.72
APT NO.301, H.M.SUITES & STUDIOS
ST. MARKS ROAD, BANGALORE - 560 001

RESPONDENTS

(BY SRI C.SHASHIKANTHA, ADVOCATE FOR R-1 ;

SRI T.NARAYANASWAMY, ADVOCATE FOR R-3;

SRI HARISH B.N., ADVOCATE FOR M/S.NARASAPPA,

DORASWAMY & RAJA FOR R-4;

R-2, 5, 7, 10, 11, 13 TO 15 ARE SERVED;

R-6, 8, 9 & 12 - SERVICE OF NOTICE HELD

SUFFICIENT V/O DTD. 6.11.2012)

ELECTION PETITION FILED UNDER SECTION 81 OF THE REPRESENTATION OF THE PEOPLE ACT, 1951 PRAYING TO CALL FOR RECORDS AND ORDER FOR RECOUNT AND SET ASIDE THE ELECTION OF THE FIRST RESPONDENT TO THE KARNATAKA LEGISLATIVE COUNCIL FROM THE BANGALORE GRADUATES' CONSTITUENCY AND TO DECLARE THAT THE PETITIONER IS DULY ELECTED TO FILL THE SEAT OF THE KARNATAKA LEGISLATIVE COUNCIL FROM THE BANGALORE GRADUATES' CONSTITUENCY.

INTERLOCUTORY APPLICATIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 13.02.2014 AND COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT DELIVERED THE FOLLOWING:

Order on I.A.Nos.2/2012 & 1/2013

I.A.No.2/2012 is filed by the returned candidate (respondent no.1) to dismiss the election petition for not stating the material facts in the Election petition and for non-disclosure of cause of action. I.A.No.1/2013 is also filed by him to strike down several paragraphs in the Election petition on the ground that they are devoid of material facts.

2. I have heard the learned counsel for the petitioner and respondent no.1 and examined the matter in the light of the decisions referred to by them.

3. In the Election petition, the petitioner has challenged the election of respondent no.1 to the Karnataka Legislative Council from the Bangalore Graduates' Constituency. The polling was held on 10.06.2012 and respondent No.1 was declared elected on 14.06.2012. The petitioner was also one of the candidates sponsored by Janata Dal (secular) and the returned candidate was sponsored by Bharatiya Janata Party. It is stated that respondent no.1 got elected by a margin of 244 votes. In the election petition, the petitioner, inter alia, has prayed for setting aside the election of respondent no.1 and for recounting of the votes polled.

4. The Election of the returned candidate (respondent no.1) is challenged on the following two grounds:

(i) Bharatiya Janata Party with the consent of respondent No.1 (returned candidate) has published an appeal (pamphlet) depicting a model ballot paper wherein respondent No.1 sought for first preference vote for himself and fourth preference vote for the petitioner, which according to the petitioner, misled the voters interfering with their free exercise of electoral right. It is also stated that the appeal (pamphlet) contained false and incorrect information. This publication, according to the petitioner, amounted to corrupt practice within the meaning of Section 123(2) & (4) of the Representation of the People Act, 1951 ('the Act' for short);

(ii) 761 votes cast in favour of the petitioner were improperly rejected by the Returning Officer resulting in the defeat of the petitioner.

5. In view of the above, it is stated that the election of the returned candidate is to be declared as void as per Section 100(1)(b)(d)(iii) & (iv) of the Act.

6. The question that requires to be examined by this Court is as to whether the Election Petition is liable to be dismissed for non-disclosure of 'cause of action' and for not stating all the 'material facts'. To answer the question, it is relevant to refer to the facts stated in the election petition.

7. Paras 6, 7 & 8 of the Election petition relates to ground No.(i) stated above; hence, it is relevant to refer to the said paras:

"6. It is submitted that the 1st Respondent has indulged in falsely publishing an appeal and circulated the same to prejudice the election of the Petitioner and exercised undue influence and interfered with the electoral right, thereby committing the corrupt practice within the meaning of Section 123(2) & (4) of the Act. **In the said Appeal, apart from others, the 1st Respondent had sought for first preference vote in his favour and fourth preference vote in favour of the Petitioner, by marking in the said manner in a Model Ballot Paper printed therein.** The 1st Respondent had also made statements knowing and believing it to be false and passing of the same as truth. The 1st Respondent has also propogated several issues/things including certain government programmes, as if it is his own and as though it is true. The material facts and particulars are as stated hereunder.

7. It is submitted that the Bharatiya Janata Party, the Political Party of the first Respondent had published the said appeal with the consent of the first Respondent both in Kannada and English languages soliciting first preferential votes in his favour, with a Model Ballot Paper. This was published on behalf of the Bharatiya Janata party by its General Secretary and printed at Abhimani Publications Ltd. This appeal was distributed/circulated by the 1st Respondent and his supporters with his consent among all the voters of the constituency by hand and also by post even before the last date for withdrawal of candidature and also during the election campaigning between 26.05.2012 to 08.06.2012. In the said appeal, the first Respondent and his Political Party had made false statements regarding his achievements as a Legislator and also as the Minister in the

Government of Karnataka and had also indicated in the Model Ballot Paper by marking in the column in the first page, the first Respondent should be given the first preferential vote and the Petitioner should be given the fourth preferential vote. This was done to mislead the voters and thereby prejudicially affect the election prospects of the Petitioner. In that regard Shri. Kushal Babu, the Election Agent appointed by the Petitioner had lodged a complaint on 29.05.2012 with the Chief Electoral Officer in Karnataka about the publication and distribution of the aforesaid false and misleading appeal. A copy of the Complaint dated 29.05.2012, is produced herewith as ANNEXURE-'B'.

8. It is submitted that the publication of the aforesaid appeal by the Political Party of the first Respondent with his consent, is a corrupt practice within the meaning of Section 123 (2) & (4) of the Act. Further, by virtue of the above appeal more than 1,000 voters were misled, while exercising their preferential vote at the time of polling and the Petitioner has lost more than 1,000 votes by the corrupt practice committed by the first Respondent and his political party Bharathiya Janata Party."

(Underlining supplied)

8. With regard to the publication (pamphlet) referred to above, learned counsel for the petitioner submitted that the petitioner's only grievance is with regard to respondent no.1 (returned candidate) seeking fourth preferential vote in favour of the petitioner in the model ballot paper depicted in the pamphlet. This, according to the petitioner, misled the voters prejudicing the prospects of the petitioner in the election.

9. The Pamphlet was not produced along with the Election petition but has been produced subsequently along with a memo dated 05.01.2013. The model ballot paper depicted in the pamphlet reads as follows :

ಮಾದರಿ ಮತ ಪತ್ರ	Model Ballot Paper

ವಿ.ಸೂ.ಃ ಅಭ್ಯರ್ಥಿಗಳ ಹೆಸರು ಕನ್ನಡ ಅಕ್ಷರ ಮಾಲೆಯ ಅನುಕ್ರಮದಲ್ಲಿರುತ್ತವೆ

Candidates Name	Order of Preference
ದೇ .... D	4
ರಾಮಚಂದ್ರ ಗೌಡ Ramachandra Gowda	1
ರ .... R	3
ಲ .... L	6
ವೇ .... V	2
ಷ .... S	5

As could be seen from the above, the model ballot paper depicted in the pamphlet does not contain the petitioner's full name except the first English alphabet of his name i.e. 'D' and in vernacular ದೇ.

10. All the voters of the constituency in question were graduates as it was a graduates' constituency. Hence, it cannot be said that the voters of the Bangalore Graduates' Constituency were in any way misled by the model ballot paper depicted in the pamphlet. The judgment relied on by the petitioner's counsel in Elvin Sangma v. Projengton (AIR 1975 SC 425) is not applicable to the facts of this case as all the voters in the constituency in question were graduates and not illiterate villagers as in Elvin Sangma's case. In Elvin Sangma's case more than 80% were illiterate voters and they were found misled by the dummy ballot papers distributed by the returned candidate showing wrongly the election symbol of the other contesting candidate. It cannot be said that the voters who were graduates in the present case were misled by the model ballot paper depicted in the pamphlet. The decision in Elvin Sangma's case, hence, has no application to the present case. It cannot be said that the pamphlet unduly influenced the graduate voters to vote in favour of respondent No.1 or refrained the voters from voting in favour of the petitioner.

11. Law does not prohibit pursuading voters to vote or not to vote for a candidate. Proper and peaceful persuasion is the motive force of any democratic process. 'Advertising is the very essence of democracy' as stated by Anton Chekhov. In this context, it is relevant to refer to the following observations of the Supreme Court in **Bachan Singh vs. Prithvi Singh** [AIR 1975 SC 926]:

"19. Doubtless the definition of 'undue influence' in Sub-s (2) of Section 123 is couched in very wide terms, and on first flush seems to cover every conceivable act which directly or indirectly interferes or attempts to interfere with the free exercise of electoral right. In one sense even election propaganda carried on vigorously, blaringly and systematically through chrismal leaders or through various media in favour of a candidate by recounting the glories and achievements of that candidate or

his political party in administrative or political field, does meddle with and mould the independent volition of electors, having poor reason and little education, in the exercise of their franchise. That such a wide construction would not be in consonance with the intendment of the legislature is discernible from Proviso to this Clause. The Proviso Illustrates that ordinarily interference with the free exercise of electoral right involves either violence or threat of injury of any kind to any candidate or an elector or inducement or attempt to induce a candidate or elector to believe that he will become an object of divine displeasure or spiritual censure. The prefix 'undue' indicates that there must be some abuse of influence. "Undue influence' is used in contra distinction to proper influence.' **Construed in the light of Proviso, Clause (2) of S.123 does not bar or penalize legitimate canvassing or appeals to reason and judgment of the voters or other lawful means of persuading voters to vote or not to vote for a candidate. Indeed such proper and peaceful persuasion is the motive force of our democratic process.**

20. We are unable to appreciate how the publication of this poster interfered or was calculated to interfere with the free exercise of the electoral right of any person. There was nothing in it which amounted to a threat of injury or undue inducement of the kind inhibited by Section 123(2)."

(Underlining supplied)

12. In my opinion, neither the contents of the pamphlet including the model ballot paper depicted therein nor the facts stated in paras 6, 7 & 8 of the Election petition referred to above would make out a case of corrupt practice within the meaning of Section 123(2) & (4) of the Act. Hence, it cannot be said that the election petition would disclose any cause of action insofar as it relates to the allegation of corrupt practice by the returned candidate.

13. Now coming to ground No.(ii) namely, the allegation of improper rejection of 761 votes cast in favour of the petitioner, it is relevant to refer to paras 12 to 32 of the Election petition; they read as follows:

"12. It is submitted that in the First Round of counting about one thousand ballots papers were given to all the 14 counting tables, except in table Nos.6, 8 and 13, where only 999 ballot papers were given. After counting, 13,997 votes were found to be valid and 1,298 votes were rejected. The Petitioner had secured 3,715 votes and the first Respondent had secured 2,981 votes and other candidates had got the remaining votes.

13. It is submitted that in first Round, the scrutiny of ballot papers were not done in accordance with Rule 73 by the Counting Supervisor and assistants and several valid votes were treated as doubtful votes on flimsy grounds, in a very haphazard manner. Thereafter, without verifying the same i.e. the doubtful votes and applying his mind, the Returning Officer had mechanically rejected the same, accepting the stand of the Counting Supervisor and Assistants. It is submitted that they were valid votes and they were rejected on flimsy grounds and contrary to law.

14. It is submitted that in some of the rejected votes, the preferential mark of '1' was preceded by '0' i.e., the voters had marked as '01'. The rejection is illegal and contrary to the rules. A chart containing the table numbers, the votes rejected and the votes which were cast in favour of the Petitioner is produced hereunder as Chart-A:

CHART-A

BALLOT PAPERS WITH MARKING-'01'

Table No.	Round-1	
	Votes Rejected	Votes Cast in favour of the Petitioner
1	15	8
2	18	8
3	9	6
4	17	12
5	30	25
6	25	15
7	18	15
8	7	5
9	8	6
10	18	15
11	14	11
12	9	6
13	14	10
14	6	2
Total	**208**	**144**

15. Similarly, the ballot papers containing the votes cast and marked ① as indicating the first preference vote i.e., figure 1 encircled, have been rejected illegally, in which majority of votes were in favour of the Petitioner, as per Chart-B hereunder.

CHART-B

BALLOT PAPERS WITH MARKING- ①

Table No.	Round-1	
	Votes Rejected	Votes Cast in favour of the Petitioner
1	7	4
2	12	8
3	8	6
4	10	6
5	5	3
6	15	9
7	10	5
8	4	2
9	15	9
10	5	3
11	20	13
12	6	4
13	7	4
14	2	1
Total	**125**	**77**

16. The Petitioner submits that the marks having the mark as herein "1√", i.e., right mark after figure 1, have also been improperly rejected and the Petitioner had secured more number of votes and are shown in Chart-C hereunder:

CHART-C

BALLOT PAPERS WITH MARKING - "1√"

Table No.	Round-1	
	Votes Rejected	Votes Cast in favour of the Petitioner
1	7	0
2	5	3
3	8	5
4	6	3
5	10	6
6	9	5
7	3	2
8	5	3
9	6	4
10	15	9
11	10	6
12	5	3
13	4	2
14	15	0
Total	**108**	**51**

17. The first preferential vote marked against the candidate, within the column showing the name of the candidates have also been rejected, which is illegal and improper and the Petitioner has secured more votes and they are shown in Chart-D as hereunder:

CHART-D

BALLOT PAPERS WITH FIRST PREFERENTIAL MARK FOUND IN THE COLUMN OF THE CANDIDATES NAME

Table No.	Round-1	
	Votes Rejected	Votes Cast in favour of the Petitioner
1	3	1
2	4	2
3	3	0
4	6	4
5	7	3
6	3	2
7	4	2
8	6	4
9	5	4
10	3	0
11	8	4
12	10	5
13	6	3
14	4	2
Total	**72**	**36**

18. It is submitted that the Second Round of Counting commenced at about 4.00 P.M. Tables 1 to 13 were given 1,000 ballot papers and Table No.14 was given 842 ballot papers. In all 13,842 votes were counted, out of which 1,205 votes were rejected. The Petitioner had secured 2,965 first preferential votes and the first Respondent had secured 3,540 first preferential votes and the remaining votes were secured by other candidates.

19. It is submitted that in Second Round also the scrutiny of ballot papers were not done in accordance with Rule 73 by the Counting Supervisor and Assistants and several valid votes were treated as doubtful votes on flimsy grounds, in a very haphazard manner. Thereafter, without verifying the same i.e, the doubtful votes and applying his mind, the Returning Officer had mechanically rejected the same, accepting the stand of the Counting Supervisor and Assistants. It is submitted that there were valid votes and they were rejected on flimsy grounds and contrary to law.

20. It is submitted that even in the second round in some of the rejected votes, the preferential mark of '1' was preceded by '0' i.e., the voters had marked as '01'. The rejection is illegal and contrary to the rules. A chart containing the table numbers, the votes rejected and the votes which were cast in favour of the Petitioner is produced hereunder as 'Chart-E'.

CHART-E

BALLOT PAPERS WITH MARKING - '01'

Table No.	Round-2	
	Votes Rejected	Votes Cast in favour of the Petitioner
1	15	8
2	18	8
3	9	6
4	17	12
5	30	25
6	25	15
7	18	15

8	7	5
9	8	6
10	18	15
11	14	11
12	9	6
13	14	10
14	8	5
Total	**210**	**147**

21. Similarly, the ballot papers containing the votes cast and marked as ① i.e., by encircling figure one, indicating the first preference vote, have been rejected illegally as per 'Chart-F' hereunder.

CHART-F

BALLOT PAPERS WITH MARKING – ①

Table No.	**Round-2**	
	Votes Rejected	**Votes Cast in favour of the Petitioner**
1	4	1
2	8	5
3	6	4
4	7	5
5	8	7
6	10	8
7	26	20
8	8	3
9	10	5
10	8	4
11	6	3
12	8	5
13	10	6
14	10	5
Total	**129**	**81**

22. The Petitioner submits that the marks having '1√' i.e., figure one succeeded by right mark, have also been rejected which are in favour of the Petitioner as per 'Chart-G' hereunder:

CHART-G

BALLOT PAPERS WITH MARKING - '1√'

Table No.	**Round-2**	
	Votes Rejected	**Votes Cast in favour of the Petitioner**
1	19	16
2	23	5
3	18	8
4	28	20
5	16	10
6	18	6
7	9	5

8	6	3
9	38	30
10	19	15
11	18	10
12	9	3
13	12	5
14	15	3
Total	**248**	**139**

23. The first preferential vote marked against the candidate, within the column showing the name of the candidates have also been rejected, which is illegal and improper and they are shown in Chart-D as hereunder:

CHART-H

BALLOTS WITH FIRST PREFERENTIAL MARK FOUND IN THE COLUMN OF THE CANDIDATES NAME

Table No.	**Round-2**	
	Votes Rejected	**Votes Cast in favour of the Petitioner**
1	3	3
2	4	4
3	6	5
4	8	6
5	4	3
6	5	4
7	12	10
8	6	5
9	6	3
10	7	5
11	28	25
12	10	7
13	8	6
14	0	0
Total	107	86

24. It is submitted that the intention of the voter is to cast his vote in favour of the candidate of his choice and in this case the Petitioner herein at Sl.No.1. This preference has been exercised by some of the voters by prefixing '01', 1 '1√' and the votes marked in the candidates column. Looked at from any angle the irresistible conclusion that can be drawn is that the voters have cast their votes in favour of the Petitioner at Sl.No.1 and it does not in any manner disclose the identity of the voter. Further, there is no prohibition to cast their votes in the manner indicated above. This is also not one of the illustrations in the invalid instances as indicated in the Model Ballot Paper (Ann-C), by the Election Commission of India. The cumulative effect of not counting the votes referred to in Tables A to H, would clearly go to show that Petitioner has secured highest number of votes, had the Returning Officer taken into account the votes referred to in the above tables and apart from securing the highest number of votes, the Petitioner ought to have been declared as elected. By not counting the votes there is statutory violation of Rule 73, thereby materially affecting the result of the election.

25. It is submitted that out of the total of 514 votes which were rejected during the first round of counting, 308 valid votes having the preferential mark like '01', '1√' and the votes marked in the candidates column cast in favour of the Petitioner, have been rejected. And in the second round, similarly, out of total of 673 which were rejected, 453 votes were cast in favour of the Petitioner. These Votes are not treated as invalid either under Rule 73 of the Rules or in the Model Ballot Paper published by the Election Commission of India (Ann-C), which was given wide publicity in all the polling stations of the Constituency. Thus in all 761 valid votes cast in favour of the Petitioner, have been rejected improperly.

26. It is submitted that since the difference of votes between the Petitioner and the returned candidate is only 244 as per the final result sheet, the result of the election is materially affected by improper rejection of 761 valid votes and therefore, the election of the first Respondent is liable to be set aside, under Section 100 (1)(b)(d)(iii) & (iv) of the Act.

27. It is submitted that the during the counting, after 15th count elimination process, the Petitioner had secured 8,224 votes and the first Respondent had secured 8,418 votes and there was a difference of only 194 votes as borne out by the Result Sheet

furnished by the Returning Officer, a copy of which is produced herewith as ANNEXURE-'D'. But contrary to the same, the final result sheet showed that first Respondent had won by majority of 244 votes. The round wise result sheet and the result of the elimination process Sheet in Form No.23B are produced herewith as ANNEXURES-'E' AND 'E1', respectively. It demonstrates that all was not well in the election process.

28. From the aforesaid, it is clear that the Returning Officer has illegally declared the first Respondent as duly elected in Form No.23, a copy of which is produced herewith as ANNEXURE-'F'.

29. It is submitted that during the elimination process the Petitioner and his election agents were not allowed to verify whether the second preference votes exercised by the voters is properly distributed, especially in favour of the Petitioner and they were made to observe from a distance of 15 feet away from the place of elimination process and therefore, they were not able to watch and raise objections regarding the transfer of second preference votes in favour of the Petitioner. It is submitted that further, during the 12th, 13th and 14th count of the elimination process, when the 4th Respondent's transfer of votes in favour of the continuing candidates was taking place, it was in the wee hours i.e., late in the night and the Counting Staff were drowsy and they did not properly scrutinize the second preference votes cast in the ballot papers of the 4th Respondent. The Returning Officer and all the Counting Staff rather mechanically transferred those votes in favour of first Respondent and thereby manipulated the votes in favour of the first Respondent with a view to help the first Respondent, who is the ruling party candidate. The officials involved were Revenue officials who are under the control of the Government, which is in power in the State.

30. It is submitted that the entire counting process was done in a haphazard manner. Though the counting commenced at 8.00 AM on 13th June, 2012, it continued till next morning, till about 8,o Clock on 14th June, 2012, which is an abnormal process in counting, clearly demonstrating that all was not well in the entire election process. When the Petitioner and the election agent came to know that the Returning officer had rejected the first preferential marking of '01' in large numbers, the Petitioner gave a application at about 7.15 pm on 13.06.2012 for recount of rejected votes. The Returning Officer had refused to order for recount of the rejected ballot papers and he gave an endorsement on 14.6.2012 relying upon the election Commission's direction, which is totally contrary to the Rules. A copy of the application for recount of rejected ballot papers and the endorsement given by the Returning Officer is produced herewith and marked herewith as ANNEXURES-'G' and 'G1' , respectively. No proper arrangements were made for watching the counting process of the second preference votes. The candidates and election agents were made to sit in a stage which was set up towards north of the hall and they were not in a position to ascertain and watch the proper transfer of second preference votes and also rejection of the valid votes and were unable to make a note of the details of the same.

31. It is submitted that the haphazard manner and the irregular process of counting and its delay has been reported in several news papers both in Kannada and English. The said news was also telecast in almost all Kannada TV Channels on 13th and 14th of June, 2012. There were protests from the counting agents of the political parties including the Petitioner's counting agents about the illegal counting process. Inspite of such protests the Returning Officer did not take proper steps to count the ballot papers as per the Rules and also the directions issued by the Election Commission of India by its letters dated 12.06.2012, bearing No.322/KT-LC/1/2012-CC&BE, and 17.12.2011, bearing No.318/RO-HB/2011- CC&BE, along with its enclosures. It is submitted that the rejection of the 761 ballot papers with '01', 1 , '1√' and figure 1 against the candidates name are improper and contrary to the Rule 73 and the directions issued by the Election Commission of India.

32. The Petitioner submits that he has obtained majority of valid votes in view of the fact that 761 number of votes cast in favour of the Petitioner have been improperly rejected by the Returning Officer and the 1st respondent has obtained 1,000 votes by means of corrupt practice which have to be excluded. There is material irregularity in the counting process. The cumulative effect is that there is a statutory violation, thereby materially affecting the result of the election. Therefore, the Petitioner is entitled to declare that he is duly elected to fill the seat in Karnataka Legislative Council from Bangalore Graduate's Constituency."

14. As could be seen from Charts A to H depicted in paras 14 to 17 and 20 to 23 of the election petition extracted above, totally 761 votes cast in favour of the petitioner were alleged to have been improperly rejected by the Returning Officer. The basis on which the figures are stated in each of the above Charts is not disclosed in the election petition. In the charts, the number of votes cast in favour of the petitioner but rejected by the Returning Officer is stated. The basis on which the petitioner has arrived at those figures is not stated. This omission amounts to non-disclosure of material facts as held by the Supreme Court in Jitendra Bahadur's case (AIR 1970 SC 276). In the said case, Jitendra Bahadur Singh was declared elected from a Parliamentary Constituency in the general elections held in 1967. The election was challenged by an elector mainly on the ground of irregularities in scrutinizing and counting of votes. The Allahabad High Court allowed inspection of all the ballot papers. The said order was challenged before the Supreme Court. The Supreme Court allowed the appeal and set aside the order made by the Allahabad High Court. K.S.Hegde,J speaking for the Bench observed that an Election Petition must contain material facts and the Court must be prima facie satisfied before ordering inspection of ballot papers and for re-count of the votes. The material facts required to be stated are those facts which can be considered as materials supporting the allegations made; if the petitioner gives some figures as to the rejection of valid votes and acceptance of invalid votes, the same must not be considered as an adequate statement of material facts when the petitioner has not disclosed in the petition the basis on which he has arrived at those figures. It is relevant to refer to the following observations made by the Supreme Court in **Jitendra Bahadur v. Krishna Behari (AIR 1970 SC 276):**

"8. The trial court was of the opinion that if an election petitioner in his election petition gives some figures as to the rejection of valid votes and acceptance of invalid votes, the same must not be considered as an adequate statement of material facts**. In the instant case apart from giving certain figures whether true or imaginary, the petitioner has not disclosed in the petition the basis on which he arrived at those figures.** His bald assertion that he got those figures from the counting agents of the congress nominee cannot afford the necessary basis. He did not say in the petition who those workers were and what is the basis of their information. It is not his case that they maintained any notes or that he examined their notes, if there were any. **The material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words they must be such facts as to afford a basis for the allegations made in the petition.** The facts stated in paragraphs 13 and 14 of the election petition and in Schedule 'E' are mere allegations and are not material facts supporting those allegations. This Court in insisting that the election petitioner should state in the petition the material facts were referring to a point of substance and not of mere form. Unfortunately the trial court has mistaken the form for the substance. The material facts disclosed by the petitioner must afford an adequate basis for the allegations made.

9. ....

10. Now coming to the rejection of the votes polled in favour of the congress nominee, under the rules before a vote is rejected the agents of the candidates must be permitted to examine the concerned ballot paper. Therefore it was quite easy for them to note down **the serial number of the concerned ballot papers**. The election petition is silent as to the inspection of the ballot papers or whether the counting agents had noted down the serial numbers of those ballot papers or whether those agents raised any objection relating to the validity of those ballot papers; if so who those agents are and **what are the serial numbers of the ballot papers** to which each one of them advanced their objections. **These again are the material facts required to be stated."**

(Emphasis & underlining supplied)

15. As could be seen from the above observations, the Supreme Court has, with reference to the allegations made in the election petition therein, has observed that the **election petition was silent** as to whether the counting agents had noted down the serial numbers of the ballot papers, or whether those agents raised any objection relating to validity of those ballot papers and if so, who those agents were, the serial numbers of the ballot papers to which each one of them advanced their objections. It also noticed that the basis on which the petitioner arrived at some figures as to the rejection of valid votes and acceptance of invalid votes was not disclosed in the petition. The above facts are held to be material facts which are required to be stated in the context of a prayer for recounting of votes on the ground of irregularities in scrutinizing and counting of votes. It is relevant to state none of the aforesaid facts are stated in the present election petition.

16. Further, nowhere in the election petition, the petitioner has stated the serial numbers of any of the ballot papers alleged to have been improperly rejected. It is not the case of the petitioner that the Counting Agents or the Election Agent prepared any notes at the time of the alleged illegal counting and noted down the particulars of the ballot papers improperly rejected by the Returning Officer.

17. As held by the Supreme Court in several judgments, all the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would result in dismissal of the election petition.

18. In view of what is stated above, it cannot be said that the election petition would disclose any 'cause of action' relating to the allegation of 'corrupt practice'. The Election Petition also does not contain the material facts relating to the allegation of improper rejection of votes cast in favour of the petitioner. Accordingly, I.A.No.2/2012 & I.A.No.1/2013 are allowed; consequently, the election petition is dismissed under Section 86(1) of the Act but with no order as to costs.

Election Petition dismissed.

P.R. 1 **Sd/-**
SC-50 **JUDGE**.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

NOTIFICATION

Dated : 11th December, 2014.

No. 82/KT-LC/(12/2013)/2014- In pursuance of Section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order of the High court of Karnataka dated 5th September, 2014, in Election Petition No. 12 of 2013.

By Order
TAPAS KUMAR
PRINCIPAL SECRETARY
ELECTION COMMISISON OF INDIA

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 05TH DAY OF SEPTEMBER 2014

BEFORE

THE HON'BLE MR. JUSTICE L. NARAYANA SWAMY

ELECTION PETITION NO.12 OF 2013

Between:

Abraham T.J.
S/o Joseph T.A.
Aged around 52 years
No.2457, 16th 'B' Main
HAL 2nd Stage
Bangalore - 560 008

- Petitioner
Party-in-person

And:

Ashok Kheny
S/o Maharudrappa
R/o No.2-45, Ranjol Kheny
Bidar Taluk, Bidar District

Also at :

M/s. Nandi Infrastructure Corridor Enterprises Ltd.
No.1, Midford House
Midford Gardens
Off M.G. Road
Bangalore - 560 001

-Respondent

(by Shri Girish G.N. and S.B. Mathapati, Advocates)

This Election Petition is filed under Section 81 read with Sections 100(1)(a)(d)(i) and (iv), 33(4) and (5), 33-A, 36, 5(c) & 9A of the Representation of People's Act, 1951 and Articles 9 and 173 of the Constitution of India.

In this election petition, arguments being heard, reserved for orders on IA, coming on for pronouncement, this day, the Court made the following:

ORDER

The Petitioner in this Election Petition has made a prayer to declare that the election of respondent is illegal and further prayer is made to set aside the selection of respondent as being void under Section 100(1)(d)(i) and (iv) of the Representation of People Act, 1951.

2. The petitioner submitted that as per notification and calendar of events issued for General Election to the Legislative Assembly of Karnataka by Election Commission, Government of India on 10th April 2013 the petitioner submitted his candidature. The election was held pursuant to the said notification in which the respondent has been declared as duly elected from 49-Bidar (South) Assembly Constituency. The respondent is a returned candidate from the said Constituency and to that effect the Election Commission has declared him as being elected.

3. The grounds urged by the petitioner for declaration is that the respondent is not an Indian citizen. He has acquired the citizenship of United States of America (for brevity referred to as 'USA') and by acquiring so, he has lost his citizenship of this Nation and accordingly he is disentitled to contest in the said elections. By relying on Article 173 of the Constitution of India he submits that the respondent shall not be qualified to be chosen as a Member of Legislative Assembly of Karnataka since he is not a citizen of India. The other ground taken by the petitioner for the purpose of disqualification of the respondent is that the respondent is engaged in a business and to execute a contract he has entered into an agreement with the Government of Karnataka. When a person entered into business contract with Government, he holds the office of profit. In this regard, He referred to Section 9A of the Representation of People Act, 1951 (for brevity referred to as 'the Act'), which contemplates that a person shall be disqualified, if and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for supply of goods for execution of

any work undertaken by that Government. While submitting the nomination paper by the respondent, the petitioner had raised objections. On 18th April 2013, the Returning Officer issued notice to the respondent and the petitioner and directed them to submit information, if any, or to produce document in respect of their respective claims. Mainly on these grounds the petitioner has challenged the election of the respondent. In order to prove his case with regard to citizenship of the respondent, the ground urged by him is that the respondent has not denied the allegations made by the petitioner for having acquired citizenship of United States of America and hence, he submits that failure to produce materials and evidence to the effect that he has not obtained the same, has to be held that the respondent has acquired the citizen-ship of United States of America.

4. The learned counsel for the respondent has filed IA.IV of 2013 under Order VI Rule 16(a) and (c) of the Code of Civil Procedure, 1908 requesting to strike off the pleadings contained in paragraphs 5, 7, 8, 9(a) to (d), 10, 14, 16, 16(a) to (h), 17, 18 and 19 as the same are scandalous, unnecessary, frivolous and vexatious and is otherwise an abuse of process of the Court and also its pride. It is submitted that the above paragraphs be struck off in the interest of justice and equity. Further it is submitted to dismiss the petition itself since the question of citizenship cannot be challenged in an election petition, as the same has to be adjudicated in a Court having jurisdiction and the Authority constituted for the same as per the Indian Citizen-ship Act, 1955. The allegations of the petitioner that the respondent has acquired foreign citizenship and consequently not being a citizen of India, as also the grounds urged in paragraphs 5, 8, 9, 16(a), (b), (c) and (d), 17 and 19 of the petition are vexatious, scandalous, frivolous and hence are to be struck off.

5. With regard to the contention of the petitioner in the election petition that the name of the respondent has been wrongly included in the election roll, the learned counsel for the respondent submits that the election cannot be set aside on the ground that the name of the respondent has been included in the electoral roll illegally. The inclusion of the name of the respondent in the electoral roll by the authority empowered under law to prepare the same, cannot be a ground for setting aside the election of the returned candidate under sub-clause (iv) of Clause (d) of sub-section (1) of Section 100 of the Act. On the contrary, it is submitted that presumption should be drawn that the name of the respondent included in the electoral roll is as per the procedural requirement under the statute. Inclusion of the name in the electoral roll is not in dispute. Under the circumstance, it is submitted that the pleadings in paragraphs 5, 8, 14, 16(g), (h) and 19 of the petition are liable to be struck off.

6. Further, it is submitted that the ground taken by the petitioner that since the respondent holds an office of profit he suffers disqualification under Section 9A of the Act, is not supported by any materials evidence or proof. The respondent has not entered into contract for supply of goods to the State Government in his individual capacity. The State Government is not equity holder in the Nandi Infrastructure Corridor Enterprise (for short hereinafter referred to as 'NICE') and the Government has not invested in any of the contracts taken-up by NICE. As is alleged by the petitioner, the State Government does not hold 25% of the share in the NICE and there is no equity holding by the State Government in any of the companies flouted by the respondent. The contract executed by the Government with NICE in execution of Bangalore Mysore Infrastructure Corridor Project (for hereinafter referred to as 'BMICP') is under 'Build, Own, Operate, Transfer' (for short 'BOOT') basis, which was entirely conceived by NICE wherein NICE implements BMICP at its own risk and without any investment from the Government. Under the circumstance, the ground urged by the petitioner that the respondent is having interest in the State Government since there is a contract entered into, is baseless and without support of any materials. Hence it is submitted that the pleadings in paragraphs 5(2), 8, 16(b), (c), (d), (e) and (f) and 19 of the Election petition be struck off.

7. In response to the ground taken by the Petitioner that the result of the election of the respondent has materially affected him, it is submitted by the learned counsel for the respondent that the said ground is totally baseless and without any merits. The respondent has secured 47,763 valid votes as against the petitioner who has secured merely 846 votes. Hence, the election of the respondent has in no way affected the petitioner. The learned counsel for the respondent submitted that under these circumstances also the pleadings in paragraphs 5, 7, 8, 9(a) to (d), 10, 14, 16(a) to (h), 17, 18 and 19 of the Election petition be struck off.

8. Petitioner files objections to IA.IV of 2013 filed by the respondent. In the objections statement it is stated that the IA filed by the respondent is nothing but an attempt to somehow protect and drag the election petition. Filing of IA by the respondent is to defeat the object of Section 86(7) of the Act and hence it is submitted to reject the IA filed by the respondent. The paragraphs referred in IA and sought to be struck off is in respect of alien status of the citizenship of the respondent which renders him a non-citizen in India and making him ineligible to contest the election to the Legislative Assembly and to his status as a non-elector in 49-Bidar South Assembly Constituency or anywhere in Karnataka at the time of his filing nomination papers. As alleged by the respondent, the grounds urged in the election petition is neither scandalous nor frivolous and vexatious. The prayer made before this Court to struck off the paragraphs in the pleadings will become infructuous, only when the respondent swears to affidavit that he has never ever voluntarily accepted the citizenship of USA at any time. As long as the respondent proves before this Court that he has not voluntarily accepted the citizenship of USA, then only it can be presumed that the respondent is a citizen of India. Under the circumstance, it is submitted that the respondent is not entitled to contest for elections and this aspect has not been considered by the Returning Officer and objections have been disposed of without assigning any valid reasons. The sum and substance of the case is that respondent has not denied the allegations made against him about the citizenship.

9. From the voter list of 49-Bidar South (General) Assembly Constituency, the name of the respondent is not shown at Sl.No.673 as is claimed by the respondent in the nomination paper. The petitioner submitted that the name of the respondent does not appear at Sl.No.673 at Part 78 of the 49-Bidar South Assembly Constituency and on the contrary respondent has failed in producing documentary proof. The respondent has committed an act, which disentitles him from contesting the election from the said Constituency. Further, in

support of his case, the respondent to claim the fact that he is a citizen of India relying on the Passport issued by the Government of India renewed from time to time, is possibly a product of fraudulent act of the respondent who has deliberately not disclosed the truth that he had been a migrant in the United States of America since 1979 and naturalised his citizenship there and this aspect has been suppressed by him. The grounds taken by the petitioner about the citizenship of the respondent has not been firmly denied by the respondent and since the same goes against him, the paragraphs referred in the petition need not be struck off. In order to substantiate the fact that respondent is a citizen of USA, the petitioner had stated that he had obtained a contract with SEPTA a State owned Corporation in the State of Pennsylvania in USA by virtue of being a citizen of USA and the same has never been specifically denied by the respondent. The fact that respondent is not a voter in Bidar Assembly Constituency has been proved by exhaustive documents which indicate that the respondent's name is not in the voters list at Sl.No.673 at Part 78 of 49-Bidar South Assembly Constituency. Hence, he is not a voter in the said constituency since his name does not figure out in the electoral roll. The petitioner, in support of his submissions, has relied upon the following judgments:

(i) The judgment of Hon'ble Supreme Court in the case of **DHARTIPAKAR MADAN LAL AGARWAL v. RAJIV GANDHI** reported in AIR 1987 SC 1577 and referred to paragraphs 8 and 14 of the judgment;

(ii) The judgment of Hon'ble Supreme Court in the case of **HARI SHANKER JAIN v. SONIA GANDHI** reported in AIR 2001 SC 3689 and referred paragraph 5 of the judgment;

(iii) The judgment of the Hon'ble Supreme Court in the case of **MICHAEL B. FERNANDES v. C.K. JAFFAR SHARIEF AND OTHERS** reported in AIR 2002 SC 1041 and referred to paragraph 4 of the judgment.

(iv) The judgment of Madras High Court in the case of K. KALAIMANI v. MATHIARASAN S AND OTHERS reported in (2012)4 CTC 43 and referred to paragraph 23 of the judgment;

Hence a prayer is made in the statement of objections to reject IA.IV of 2013 filed by the respondent.

10. Heard the learned counsel for the parties. The prayer made by the petitioner in the petition is to declare the election of the respondent under Section 100(1)(d)(i) and (iv) of the Representation of People Act, 1951. The grounds urged by the petitioner is that the respondent is an Indian origin, having acquired the citizenship of USA and further entered into an agreement with the Government of Karnataka, disqualifies him under Section 9A of the Act to contest in elections. His other ground is that the name of the respondent does not find place in the electoral list of Bidar at Sl.No.673 of the voters' list of 49- Bidar South Assembly Constituency. Article 9 of the Constitution of India contemplates that Person voluntarily acquiring citizenship of a foreign State not to be citizens No person shall be a citizen of India by virtue of Article 5, or be deemed to be a citizen of India by virtue of Article 6 or Article 8, if he has voluntarily acquired the citizenship of any foreign State. Further, Article 173 of the Constitution reads that the qualification for membership of the State Legislature a person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he.- (a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule.

11. The petitioner has made a representation on 18th March 2013 as per Annexure-D to the Chief Election Commissioner of India at New Delhi and marked a copy to the Chief Electoral Officer at Bangalore wherein he made a request to the Chief Electoral Officer to reject the candidature of the respondent as his very citizenship is suspect and questionable. The petitioner contended that the respondent had voluntarily acquired citizenship of a foreign state, viz. USA and in order to fortify the same he has referred about twenty documents, viz. the list of moveable assets, investment in bonds, investment in Insurance Companies, retirement benefit taken from DENWARE, USA and properties referred in item No.1 to 14 and accounts number in HSBC Bank, Axis Bank, Susquhanna Bank, USA, Citi Bank, Green Tree, USA, etc. It has been observed by the Electoral Officer in his communication dated 18th April 2013 that the objection made by the petitioner has not been accompanied by any of the supporting documents. However, it has been felt that the issue needs to be examined and hence it was decided to afford an opportunity to both the parties and accordingly an opportunity was given by issuance of notice. The respondent had furnished detailed objections and materials and requested the authorities to reject the objections made by the petitioner since he is a citizen of India and has not acquired citizenship of any foreign country, including USA.

12. It is submitted by the petitioner that the respondent has stated in the affidavit that he denies acquiring of citizenship of USA but there is no denial for other allegations made by the petitioner. The respondent has furnished some of the materials as per Annexure-G along with affidavit denying allegations of the petitioner. The Electoral Officer, by his Order dated 19th April 2013 in No. ELN/RO/49/01-2013-14 rejected the case of the petitioner. Following issues have been framed by the Electoral Officer:

(i) whether the objections regarding ineligibility of Mr. Ashok Kheny is to be accepted on the ground that he had acquired citizenship of USA and had relinquished his citizenship of India?

(ii) Whether the objection regarding the eligibility of Mr. Kheny on the ground of subsisting contract with the appropriate Government under Section 9A of the Act be accepted?

(iii) Whether the objection regarding Mr. Ashok Kheny holding office of profit can be accepted?

13. All these issues have been rejected by assigning reasons. In order to decide the first question with regard to citizenship, the Electoral Officer has relied upon a judgment of the Hon'ble Supreme Court in the case of **BHAGWATI PRASAD DIXIT v. RAJEEV GANDHI** reported in AIR 1986 SC 1534; in the case of **SMT. D.K. THARADEVI SIDDHARTHA v. DR. VIJAYA MALLYA AND ORS.**

reported in AIR 2004 KANT 177; in the case of S.A.K. MYNODDIN v. THE CHIEF ELECTION COMMISSIONER reported in AIR 2001 SC 3689 and held that production of valid passport/PAN Card is sufficient ground for accepting the nominations.

14. With regard to the second issue regarding whether the objection regarding the eligibility of Mr. Kheny on the ground of subsisting contract with the appropriate Government under Section 9A of the Act be accepted is concerned, it is held that the project in question is not undertaken by the Government and there are no pecuniary interests of the Government involved in the project. He further stated that the provisions of Section 9A of the Act require the person to have entered into the contract with the appropriate Government. Hence, it is observed that the respondent had not entered into any contract with the Government and the agreement is only between the Company and the Government. To fortify his reasoning, the Electoral Officer has relied upon the judgment of the Hon'ble Supreme Court in the case of **MANGI LAL v. KR PAWAR AND ANOTHER** reported in AIR 1971 SC 1943 wherein it has been held that A company registered under the Indian Companies Act is settled beyond dispute, is a separate entity distinct from its shareholders.

15. In the light of the submissions made by both the parties, the issue involved is :

(i) Whether the petitioner complied with Section 83(a) of the Representation of People Act and further whether the materials made available is in consonance with the requirement of the said provision ?

(ii) Whether the petitioner has made out a ground for the purpose of Section 100 of the Act to declare the election of the respondent as void ? and

(iii) Whether the acceptance of nomination of the respondent has materially affected the petitioner ?

16. When an election petition is filed, it has to be seen whether the contents of the petition is in consonance with Section 83(a) of the Act. Section 83 of the Act reads thus :

"83. Contents of petition.- (1) An election petition-

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

As per the said provisions, if the materials are looked into, it is not sufficiently furnished for the purpose of considering the case. The petitioner has stated that the respondent is not a citizen of India since he has voluntarily acquired the citizenship of USA. Except stating so, he has not furnished the materials which are required to substantiate his case. It is the case of the petitioner that in response to allegations, the respondent has not denied the fact that he had not acquired the citizenship of USA. The person who approaches the Court with a specific ground should make available fullest materials to the court. Petitioner has not done so. On the other hand, he has filed IA.1 of 2014 seeking production of documents and a direction to the respondent to file affidavit. This itself shows that he is not in possession of relevant material and also do not have personal knowledge of the said case. The Chief Electoral Officer, in his order has stated that if it is the dispute of the petitioner with regard to the citizenship, he has to approach the competent authority constituted for the said purpose and the neither the Electoral Officer nor the Returning Officer is the competent authority to decide as to whether the respondent has lost his citizenship or not. The petitioner had stated that since the respondent had not specifically denied as also failed to clarify the fact that he had not voluntarily accepted the citizenship of USA at any time and further had refused to deny the said dispute, inference should be drawn that the respondent had acquired the citizenship of USA voluntarily. The said contention of the petitioner does not hold any water. If it is the dispute with regard to the citizenship, he should have approached the competent authority under the relevant provisions of law. The respondent had contended that he is an Indian citizen and he continue to be Indian citizen and he had not been disqualified of being Indian citizen by any mode. To the contention of the petitioner that the respondent being the President of Companies established in USA and had availed the retirement benefits from DENWARE USA itself establishes that the respondent is not a citizen of India for the purpose of Section 9A of the Act and Article 173 of the Constitution of India, it is submitted by the learned counsel for the respondent that there is no scope for assumption and presumption to declare any person that he is either a citizen of India or a foreigner. It is submitted that pleadings made in paragraphs 5, 9(b), 16(c) to (d) and 19 are without any basis. When materials viz. Indian Passport, PAN Card, Voters ID, entry of name of the respondent in the voters list are produced and rightly the same have been considered by the Electoral Officer, it is to be inferred that the pleadings made in the said paragraphs are unnecessary and frivolous and scandalous.

17. With regard to the question as to whether the Electoral Officer is the competent authority or not to declare whether a person is an Indian Citizen or not, the Hon'ble Supreme Court in the case of **BHAGAVATHI PRASAD DIXIT GHOREWALA v. RAJIV GANDHI** reported in AIR 1986 SC 1534 at paragraph 11 of the judgment, has observed thus:

"The authority prescribed under the Citizenship Act, 1955 alone can decide the questions arising under section 9(2) and the rules of evidence which should govern that decision shall be those prescribed for the purpose under that Act. The High Court however relied on two decisions of this Court in **Aurn Kumar Bose v. Mohd. Furuhon Ansari & Ors.,** [1984] 1 S.C.R. 118, and the decision in Surinder Singh v. Hardial Singh & Ors., [1985] 1 S.C.R. 1059, to reach the conclusion that by virtue of Article 329 of the Constitution all questions arising in an election petition were exclusively triable in an election petition and by no other authority. In those decisions the Supreme Court was generally concerned with the power of the High Court to try all issues arising in an election petition in accordance with the provisions of the Representation of the People Act, 1951. It is no doubt true that Article 329(b) of the Constitution provides that notwithstanding anything in the Constitution no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the Legislature. It is also true that one of the grounds on which an election of a candidate can be set aside in the course of an election petition under the Representation of the People Act, 1951 is that the candidate was not a citizen of India at the relevant time. A man may not be a citizen of India because he has not acquired the citizen ship of India at all or having acquired he may have lost it by voluntarily acquiring the citizenship of another country as provided in section 9(1) of the Citizenship Act, 1955. For purposes of deciding the question arising under section 9(1) of that Act, the Central Government by virtue of the power conferred on it by section 9(2) has been given an exclusive power to determine in accordance with the rules of evidence provided for the purpose whether a person has acquired the citizenship of another country. It follows that when once a person is admitted or held to be a citizen of India, unless there is a decision of the Central Government under section 9(2) of the Citizenship Act, 1955 that he has acquired the citizenship of a foreign country, he should be presumed to be an Indian citizen. Section 9 of the Citizenship Act, 1955 is a complete code as regards the termination of Indian citizenship A on the acquisition of the citizenship of a foreign country. Sub-clause (d) of clause (1) of Article 102 of the Constitution provides that a person shall be disqualified for being chosen as and for being a member of either House of Parliament (i) if he is not a citizen of India, (ii) or has voluntarily acquired the citizenship of a foreign State or (iii) is under an acknowledgement of allegiance or adherence to a foreign State. We are concerned here with a case falling under clause (ii) and that question has to be decided by virtue of Article 11 of the Constitution and section 9(2) of the Citizenship Act, 1955 by the Central Government only. The policy behind section 9(2) appears to be that the right of citizenship of the person who is admittedly an Indian citizen should not be exposed to attack in all forums in the country, but should be decided by one authority in accordance with the prescribed rules and that every other Court or authority would have to act only on the basis of the decision of the prescribed authority in that behalf and on no other basis."

18. This Court in the case of SMT. D.K. TARADEVI SIDDARTHA (supra) reported in ILR 2004 KAR 277, in the course of judgment at paragraph 33 has observed thus:

"...The business interests by its very nature transcends territorial limits of a country and every citizen has a right to do business unless restricted by law. Therefore, the argument that a 'non-resident' Indian having business interests abroad should be held as owing allegiance or adherence to foreign power deserves to be rejected."

19. In the case of **HARI SHANKAR JAIN v. SONIA GANDHI,** reported in (2001)8 SCC 233 Pr. 20, the Hon'ble Supreme Court in the course of judgment has observed thus:

"Thus, looking at the scheme of the Citizenship Act, as also the judicial opinion which has prevailed ever since the enactment of Citizenship Act, 1955, we are unhesitatingly of the opinion that in spite of a certificate of registration under Section 5(1)(c) of Citizenship Act, 1955 having been granted to a person and in spite of his having been enrolled in the voters list, the question whether he is a citizen of India and hence qualified for, or disqualified from, contesting an election can be raised before and tried by the High Court hearing an election petition, provided the challenge is based on factual matrix given in the petition and not merely bald or vague allegations."

20. Similar is the view taken by the Hon'ble Supreme Court in the case of AZHAR HUSSAIN v. RAJIV GANDHI reported in AIR 1986 SC 1253.

21. In the light of the above judgments, it is to be held that the dispute with regard to citizenship of a person is to be determined by such authority and in such manner having regard to such Rules of evidence, as may be prescribed in that behalf. The competent authority constituted under the said provision is only the authority and only that authority would be the appropriate authority to decide the case. Rightly, the Returning Officer rejected the application made by the petitioner holding that the same holds no water. In that view of the matter, I am also of the opinion that the pleadings of the petitioner do not sufficiently disclose and supply the fact with regard to the respondent having acquired the citizenship of USA. Accordingly, the pleadings to that extent are liable to be set aside and are set aside.

22. The second ground is with regard to the disqualification under Section 9A of the Act. Section 9A of the Act reads thus:

"9A. Disqualification for Government contracts, etc.-- A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.

Explanation.- For the purposes of this section, where a contract has been fully performed by the person by whom it has been entered into with the appropriate Government, the contract shall be deemed not to subsist by reason only of the fact that the Government has not performed its part of the contract either wholly or in part."

23. In paragraph 16(a) of the petition it is contended that the respondent has not at all specifically denied and willfully refused to clarify the allegation attracting his disqualification to contest elections by reason of entering into a contract with the Government of Karnataka and hence is disqualified under Section 9A of the Act as he is engaged/involved in a contract with the Government of Karnataka, as he is the Managing Director of M/s. Nandi Infrastructure Corridor Enterprises Limited and in that capacity, the occupation of the respondent is clearly a contract of profit. In support of the same, the petitioner has placed reliance on the judgment of this Court in the case of ALL INDIA MANUFACTURERS ASSOCIATION v. STATE OF KARNATAKA reported in 2005(3) KarLJ 521.

24. Per contra, the learned counsel appearing for the respondent contended that he has not entered into contract for supply of goods or execution of work undertaken by the Government in his individual capacity, and hence Section 9A of the Act is not applicable. Further, it is contended that the allegation made by the petitioner is frivolous, scandalous and vexatious and is abuse of process of law only to wreck vengeance against the respondent.

25. The petitioner in paragraphs 15, 9(d), 16(e), (f) and 19 of the petition though contended that the respondent has entered into an agreement with Government of Karnataka, but has not produced any materials in support of it. Merely because the respondent is holding a post in the company, cannot be presumed that he has entered into an agreement in his individual capacity. The same requires consideration as to whether: (a) that there should be a contract entered into by the candidate; (b) that it should be entered into by the candidate in the course of his trade or business; (c) that it should be entered into with the appropriate Government; (d) that it should be for the execution of such works. The respondent has made specific pleadings and submissions to the effect that he has not entered into an agreement and the fact is Bangalore-Mysore Infrastructure Corridor Project has taken up the work of laying road for NICE, and the same is being implemented on 'Build, Own, Operate, Transfer' (BOOT) basis and as such there is no financial investment of State Government or financial implication on the Government in dealing with the said project. NICE is a distinct and private legal entity in the eye of law. A company is a legal entity and also a legal person which can enter into an agreement for carrying on its business. Even assuming that the respondent is a Director or Officer, he has no direct role and it cannot be said that he, in his individual capacity, has entered into agreement or business transaction. In this regard, it is useful refer to the judgment of Hon'ble Supreme Court in the case of **STATE OF KARNATAKA v. ALL INDIA MANUFACTURERS ASSOCIATION AND ANOTHER** reported in (2006)4 SCC 683 wherein at paragraph 8 of the judgment it has observed thus:

"8. A Government order (No.PWD 32 CSR 95, Bangalore, dated 20.11.1995) ensued, which in terms pointed out that the implementation of the Project was to be done by a private consortium. The Preamble to the Government Order recited that the Project work was to be completed by the Consortium with their own resources and that the Consortium would keep the project going for thirty years, so as to get a return of the expenditure, profit, etc. through collection of tolls. It is important to note that the land acquisition expenditure was also to be borne by the Consortium. To make the Project economically viable, the Consortium had proposed development of seven townships, which as already stated, was reduced to five by the Cabinet. It is also important to note that the Government Order specifically permitted the development of five townships along with the construction of the Express Highway. As already stated, the Consortium was to recoup its expenditure and obtain profits through tolls the first system of its kind in Karnataka. Consequently, it was felt that the modification of the existing laws might become necessary. The necessary legal changes were to be examined by the concerned administrative departments, who would take "necessary action and also extend co-operation for implementation of the project."

26. The Hon'ble Supreme Court, in the case MANGILAL (supra) at paragraph 9 of the judgment has observed thus:

"9. ... But, in our opinion, the contract of supply of electricity by the Electric Supply Company can by no means be considered to be a contract entered into by respondent No.1 in the course of his trade or business by reason merely of the fact that he was at the relevant time Chairman of the Board of Directors of the Company. It is not possible to describe the business of the Company to be the trade or business of the Chairman of the Board of Directors. A Company registered under the Indian Companies Act, it is settled beyond dispute, is a separate entity distinct from its shareholders..."

27. Further, the Hon'ble Supreme Court in the case of **RANJEET SINGH v. HARMOHINDER SINGH PRADHAN** reported in (1999)4 SCC 517, at paragraph 7 of the judgment has observed thus:

"7. Section 9-A is a statutory provision which imposes a disqualification on a citizen. It would, therefore, be unreasonable to take a general or broad view, ignoring the essentials of the Section and the intention of the legislature. Purposive interpretation is necessary. In Dewan Joyna Vs case (supra). Section 9-A of the Act has been correctly interpreted in the following words:

"An analysis of Section9-A of the Act shows that only in two cases a person would be disqualified if he has entered into a contract with the approoriate government in the course of his trade or business which is subsisting on the date of scrutiny of nomination. They are (1) when the contract is one for supply off goods to the appropriate government and (ii) where the contract is for the execution of any works undertaken by that Government. The Andhra Pradesh High Court held that since the contracts entered into by the successful candidate with the State Government to sell arrack and toddy did not come within the

mischief of Section 9-A of the Act as they were neither for supply of goods to the government nor for the execution of any works undertaken he did not suffer from any disqualification for being chosen as a member of the Legislative Assembly."

We have gone through the above decision carefully. We are of the view that. The High Court was right in the said case in holding that the returned candidate had not suffered from any disqualification by reason of the fact that he was an excise contractor."

28. In the case of **KARTAR SINGH BHADANA v. HARI SINGH NALWA AND OTHER** reported in AIR 2001 SC 1556 at paragraphs 6 and 7, it is observed thus:

"6. This Court in Ranjeet Singh Vs. Harmohinder Singh Pradhan [1999(4) SCC 517] was concerned with a case where the returned candidate had a subsisting contract, in partnership with others, for the sale of liquor with the appropriate Government. This Court, relying upon Dewan Joynal's case, held that the returned candidate has not incurred the disqualification. This Court said that Section 9- A was a statutory provision which imposed a disqualification on a citizen; it was, therefore, unreasonable to take a general or broad view, ignoring the essentials of the section and the intention of the legislature.

7. In so far as is relevant to a case where it is alleged that a candidate holds a contract for the execution of works undertaken by an appropriate Government, Section 9-A requires (a) that there should be a contract entered into by the candidate; (b) that it should be entered into by him in the course of his trade or business; (c) that it should be entered into with the appropriate Government; (d) that it should subsist; (e) that it should relate to works undertaken by that Government and (f) that it should be for the execution of such works. The provisions of Section 9-A disqualify a citizen from contesting an election; a citizen may, therefore, be disqualified only if the facts of his case squarely fall within the conditions prescribed by Section 9-A.

29. In the light of the aforesaid judgments, I hold that the petitioner has failed to substantiate the fact that the respondent is disqualified as having business transaction with the State of Karnataka. Hence, the pleadings in 5, 9(d), 16(e), (f), and 19 of the Election Petition are liable to be struck off and accordingly are struck off. In view of the observation made in the above cases, the allegations made by the petitioner against the respondent for disqualification under Section 9A of the Act also has to be rejected as frivolous and are liable to be struck off.

30. The last issue is in respect of disqualification under Section 5C of the Act. The petitioner, at paragraphs 16(c), (g) and (h) and 19 of the petition, has contended that after removal of name from Bangalore Constituency, the name of the respondent does not appear in the voters list; and therefore, the acceptance of nomination of the respondent is violative of Section 5C of the Act. Before examining the case of the petitioner, Section 36 of the Act is to be looked into, which provides for the scrutiny of nomination by the Returning Officer. Sub-Section (4) of Section 36 of the Act enables the Returning Officer that he shall not reject any nomination paper on the ground of any defect, which is not a substantial character. The Returning Officer, after satisfying the fact that the respondent is a voter of 49-Bidar South General Assembly Constituency, has rightly accepted his nomination. The learned counsel for the respondent has relied upon the judgment of Hon'ble Supreme Court in the case of **LAXMICHARAN SEN AND OTHERS v. A.K.M. HASSAN UZZAMAN** reported in AIR 1985 SC 1233 and referred to 15 of the judgment. In the said paragraph, it is observed thus:

"Holding the elections to legislatures and holding them according to law are both matters of paramount importance. On the one hand is the individual's statutory right of franchise, on the other is the constitutional obligation imposed by Article 168 that "For every State there shall be a Legislature..." We find it somewhat odd that, in the instant case, individuals whose rights are alleged to have been violated have not come to the Court at all. Not one out of the eight lakhs. Persons who have come to the Court are members of a political party who claim to represent them. While we are on this question, it must be emphasized that Election laws do not recognise political parties except in rule 11 (c) of the Registration of Electors Rules, 1960. The Election Symbols (Reservation and Allotment) a Order, 1968, and Explanation-I to section 77 (1) of the Act of 1951. The right to be included in the electoral roll or to challenge the inclusion of any name in the roll is a right conferred upon an individual and not upon any political party. The petitioners are espousing the cause of unnamed and undisclosed persons through a writ petition, which does not even claim to possess a representative capacity. The upshot of the petition filed by them is that some 3 crores of voters were being deprived of an opportunity to exercise their franchise in order that an investigation should be made as to whether the names of some 5 lakhs and odd persons should be included in or excluded from the electoral roll."

31. When it is clarified by the Hon'ble Supreme Court that it is not for the Returning Officer to reject the nomination, and the Returning Officer, after satisfying himself that the respondent has satisfied all the conditions has accepted the nomination, I do not find any error committed by him.

32. When election petition is filed, the petitioner should supply the fullest and maximum materials as well as evidence to the Court and petitioner should not indulge in roving enquiry to fish out evidence from the respondent and then to plead his case. Here from the pleadings, I have observed that the petitioner has stated that the respondent is not a citizen of India, but no cogent materials are produced and on the other hand he insisted upon production of documents by the respondent himself. He has not defended his case by not producing materials to the effect that respondent has acquired voluntarily the citizenship of USA. Person who approach the Court could keep in mind that he is ready with all relevant materials and shall not use the forum to conduct roving inquiry to fish out evidence from the respondent. If it is the case of the petitioner that the respondent is not a citizen of India, then he should have placed sufficient

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materials to show that the petitioner is a citizen of USA. It is contended that the respondent has entered into business agreement with the State, but no materials are available except stating that the respondent is an officer in the Company. If the Company has entered into an agreement with the Government, the Officer and Director cannot be treated as having business transaction with the Government.

33. Section 100(1)(d) of the Act makes it mandatory to examine the case of the election petitioner if the selection of candidate has materially affected the election petitioner. Annexure-N Form No.21E issued under Rule 64, which is the Return of Election, shows the list of candidates with number of votes secured. In the said list of the candidates, the name of the respondent is at Serial No.8 contesting from 'Karnataka Makkala Paksha' and has secured 47,763 votes. The candidate who has contested from 'Janata Dal (Secular)' whose name is at Sl.No.4, has secured 31,975 votes. Whereas, the petitioner who is an independent candidate and whose name is at Sl.No.15, has secured 846 votes. In view of this, the petitioner cannot contend that the acceptance nomination of the respondent had materially affected his case. If the prayer of the petitioner that the result of the respondent is to be quashed, then the candidate who has secured second highest, is to be declared as the returned candidate.

34. Under no stretch of imagination the petitioner can contend that he is materially affected by the election of respondent. On this count also the pleadings in the petition have been examined and I find that no sufficient materials are available in the petition.

35. The prayer made by the petitioner is to declare the election of the respondent as illegal and set aside his selection as void. In order to declare the selection of the respondent, I have thoroughly searched through out the petition and I could not find any material produced by the petitioner. Similarly, to consider the second prayer to declare the election of the respondent for the purpose of Section 100(1)(d)(i) and (iv) of the Act, I have examined thoroughly the pleadings and materials produced by the petitioner, but I find that nowhere the petitioner has supplied the relevant materials to show that the selection of the respondent has materially affected him. Merely to make a prayer to disqualify the returned candidate, is not important and ultimate, but, in order to consider the prayer there should be sufficient materials and pleadings in the petition.

36. Under these circumstances and in the light of the discussion made above, the prayer made by the respondent in IA.IV of 2013 filed under Order VI Rule 16(a) and (c) of the Code of Civil Procedure, 1908 require to be allowed. Consequent upon allowing IA.IV of 2013 filed by the respondent, the Election Petition is not triable and hence is liable to be rejected. In the result, I pass the following:

ORDER

1. IA.IV of 2013 filed by the respondent under Order VI Rule 16(a) and (c) of the Code of Civil Procedure, 1908 is allowed.
2. Consequent upon the allowing of the IA.IV of 2013, the election petition also stands rejected as the same is not triable.
3. The issues framed are answered accordingly.

P.R. 2 Sd/-
SC-50 JUDGE

PERSONNEL ADMINISTRATIVE AND REFORMS SECRETARIAT

NOTIFICATION

NO. DPAR 420 SAS 2014, Dated : 13th November, 2014.

Notification No. 23012/05/2013-AIS-III, dated : 07-11-2014 of Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training, New Delhi is hereby republished.

TO BE PUBLISHED IN THE GAZETTE OF INDIAN PART I SECTION 2

No. 23012/05/2013-AIS-III

Government of India

Ministry of Personnel, Public Grievances and Pensions

Deaprtment of Personnel & Training

Notification

New Delhi, the 7th November, 2014.

Shri Basavaraju appointed to the Indian Administrative Service on the basis of the Civil Services Examination held in 1988 and borne on the cadre of Karnataka has been permitted to change his name from Shri Basavaraju to Dr. B. Basavaraaju. He will accordingly be recognized as Dr. B. Basavaraaju for all official purposes.

Navneet Mishra
Under Secretary to the Government of India

By Order and in the name of the Governor of Karnataka
P.R. 3 **U.H. Narayanaswamy**
SC-25 Under Secretary to Government
DPAR (Services-1).

ಮುದ್ರಕರು ಹಾಗೂ ಪ್ರಕಾಶಕರು:– ಸಂಕಲನಾಧಿಕಾರಿಗಳು, ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ, ಸರ್ಕಾರಿ ಕೇಂದ್ರ ಮುದ್ರಣಾಲಯ, ಬೆಂಗಳೂರು–59